IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 189 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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JAYSUKHBAI MAVJIBHAI SHAH

Versus

NEW INDIA ASSURANCE CO. LTD.

Appearance:

1. Appeal from Order No. 189 of 2001

MR SURESH M SHAH for Petitioner No. 1

MR MEHUL S SHAH for Petitioner No. 1

MR YN RAVANI for Respondent No. 1

MR VIREN G DAVE for Respondent No. 2

NOTICE SERVED for Respondent No. 3,5

MR JM BAROT for MR. HS MUNSHAW for Respondent No. 4

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 13/09/2001

ORAL JUDGEMENT

1. Dhirubhai Dudabhai Mori received injuries in a motor vehicle accident which took place on 14.8.1993 at 9.30 a.m. Two vehicles involved in it, one ST Bus No.GJ-1-Z-1749 and another is Hero Honda Motor Cycle bearing No.GJ-4-4806. Shri Dhirubhai was a pillion rider of Hero Honda Motor Cycle which was driven by Ahir Raimalbhai. The said vehicle was of the ownership of Jaysukhbhai, which was insured with New India Assurance Co. Ltd. He had filed claim Petition No. 394 of 1993 before the Motor Accident Claim Tribunal at Bhavnagar, claiming compensation of Rs.6,75,000/-. The Insurance Company filed its written statement Ex.12 before the Tribunal taking all short of contentions without producing the Insurance Policy. Considering the entire, oral as well as documentary, evidence led by the parties the learned Tribunal by its Award dated 3.12.1996 partly allowed the claim petition of claimant Dhirubhai and held that ST Driver and ST Corporation, original opponents No.1 & 2 respectively of the claim petition pay jointly and severally liable 2/3 amount and the remaining opponents No.3,4 & 5 i.e. driver, owner and Insurance Company pay jointly and severally remaining 1/3 amount of the total amount of Rs.5,10,000/- to the claimant with 15 per cent interest on it.

2. It seems that aforesaid Award passed by the Tribunal was challenged by the State Road Transport Corporation before this Court by way of First Appeal and it is only thereafter the Insurance Company filed Review Petition on 11.3.1997 before the Tribunal. The Review Petition was seriously objected by all the parties including the owner of the Hero Honda Motor Cycle. However, the learned Successor in the office of the Tribunal by his impugned order dated 29.3.2001 allowed the Review Petition and modified the order passed by his predecessor by holding that the New India Assurance Co. is not liable and accordingly exonerated it from its liability. This order is challenged by the present appellant, who is owner of the Hero Honda Motor Cycle.

3. Learned Counsel Shri S.M.Shah, appearing for the appellant, vehemently submitted that the learned Tribunal committed grave error in allowing the Review Petition filed by the Insurance Company by impugned order dated 29.3.2001. He submitted that neither there was any clerical error nor any error apparent on the face of the record committed by the predecessor in office of the Tribunal. Inspite of it the learned Successor in the office of Tribunal interfered with the Award and modified the same by exonerating the Insurance Company from its liability. However, learned Counsel Shri Ravani for the

Insurance Company vehemently submitted that the learned Tribunal was fully justified in allowing the Review Petition as there was error apparent on the face of it inasmuch as in Cover Note Exh.29 the insurance was from 18.8.1993 to 17.8.1994, whereas the accident took place on 14.8.1993, therefore the day on which when the accident took place the vehicle in question was not covered by the Insurance Policy.

4. Having heard the learned Counsel for the parties and having carefully gone through the reasons assigned by the learned Tribunal for allowing the Review petition I am of the considered opinion that the learned Judge has committed grave error in accepting the Review Petition. It is clear from Para : 11 of its Judgment that the learned Tribunal was fully conscious of the fact that in review Petition it has not to rewrite or re-decide the matter which has already been decided on merit. Inspite of it the learned Tribunal committed error in considering the Cover Note Ex.29. The said Cover Note was already there on the record of the case when its predecessor in office of the Tribunal had already decided the main claim petition. It may be stated that for the reasons best known to the Insurance Company it had not produced the Insurance Policy during the pendency of the claim petition. The said Insurance policy was produced along with Review Petition. The Cover Note Ex.29 shows that there is rewriting over it. Initially it was dated "13.8.1993" which was later on changed to "17.8.1993". Similar correction is there on the Cover Note. Considering this, if the learned Tribunal had earlier come to the conclusion that the vehicle in question was fully insured on the date of the accident then in my considered opinion it was not open to the learned Tribunal to sit in Appeal over the Judgment of its predecessor in review petition and take different view in the matter.

5. The learned Tribunal has completely over looked the ground which is sought to be made out by the Insurance Company in its Review Petition for reviewing the earlier decision and Award of the learned Tribunal. In Para : 4 of the Review Petition it has been stated that ...

Thus, the cause for submitting this application arose

only after receipt of the certified copy of the Judgment and Award passed by the Tribunal and on the basis of it when the inquiry was made it was found that the policy was new one and its period was not effective from 14.8.1993.

6. Thus, it is clear that on a totally new evidence, which was alleged to have been found out, the Review Petition was filed and it is not the case of the Company that there was either any error apparent on the face of the record or there was clerical mistake.

7. Reliance was placed by Mr.Ravani on Supreme Court Judgment in the case of Moran Mar Basselios Catholicos & anr. v/s. Most Rev. Mar Poulose Athanaslus & ors., reported in A.I.R. 1954 SC 526. There cannot be any quarrel with the principle laid down by the Hon'ble Supreme Court in Moran Mar case (Supra). In my considered opinion, any other sufficient reasons mentioned in Order : 47, Rule : 1, does not include re-appreciation of oral or documentary evidence. It was a case for possession and administration. Considering the facts of that case the Hon'ble Supreme Court held that any other sufficient reasons means a reason sufficient on grounds, at least analogous to those specified in the rule. I fail to understand as to how the aforesaid Judgment of the Hon'ble Supreme Court will have any application to the facts of this case.

8. If according to the Insurance Company the learned Member of the Tribunal who earlier decided the claim petition wrongly then the only course left open to it was to file Appeal. In fact the Insurance Company could have very well filed cross objection in First Appeal filed by the ST Corporation. Inspite of that it had chosen to file Review Petition which in my considered opinion it was wrong.

9. In view of the above discussion this Appeal is allowed. The impugned Judgment and order passed by the learned Tribunal dated 29.3.2001 accepting the review Petition No.4/97 is hereby quashed and set aside. The result is that the earlier order passed by the Tribunal on 3.12.1996 in M.A.C.Petition No.394 of 1993 is restored to the file. However, there shall be no order as to costs. The Insurance Company is now directed to deposit the amount awarded in favour of the claimant within 3 months from today.

As the main Appeal from Order is disposed of, Civil Application No.5876 of 2001 will not survive. The

same is disposed of accordingly.

Date : September 13, 2001 (B.J.Shethna, J.)

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